

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v.

KENT MAERKI, et al.,

Defendants.

CRIMINAL ACTION NO.
2:19cr47

- AND -

UNITED STATES OF AMERICA

v.

DARYL G. BANK, et al.,

Defendants.

CRIMINAL ACTION NO.
2:17cr126

TRANSCRIPT OF VIDEO TELECONFERENCE PROCEEDINGS
(Status Conference)

Norfolk, Virginia

September 16, 2020

BEFORE: THE HONORABLE RAYMOND A. JACKSON
United States District Judge

1 APPEARANCES: (Via ZoomGov.com)

2 UNITED STATES ATTORNEY'S OFFICE

By: Melissa E. O'Boyle

3 Elizabeth M. Yusi

Assistant United States Attorneys

4 Counsel for the United States

5 CHRISTIAN L. CONNELL, P.C.

By: Christian L. Connell

6 Counsel for Defendant Kent Maerki

7 RICHARD S. YAROW LLC

By: Richard S. Yarow

8 Counsel for Defendant David Alcorn

9 FEDERAL PUBLIC DEFENDER'S OFFICE

By: Lindsay McCaslin

10 Keith Kimball

Assistant Federal Public Defenders

11 Counsel for Defendant Aghee William Smith, II

12 HALLAUER LAW FIRM

By: Scott F. Hallauer

13 Counsel for Defendant Tony Scott Sellers

14 AMG LAW, PLC

By: Anthony M. Gantous

15 Counsel for Defendant Thomas L. Barnett

16 GREGORY K. MATTHEWS PC

By: Gregory K. Matthews

17 Counsel for Defendant Norma Jean Coffin

18 ZOBY & BROCCOLETTI

By: James O. Broccoletti

19 Counsel for Defendant Daryl G. Bank

20 EMILY M. MUNN, P.C.

By: Emily M. Munn

21 Counsel for Billy J. Seabolt

1 (Proceedings commenced via ZoomGov.com at 2:34 p.m.)

2 THE CLERK: In Case 2:17cr126, United States of
3 America vs. Daryl G. Bank, et al., and in Case 2:19cr47,
4 United States of America versus Kent Maerki, et al.

5 Ms. O'Boyle, Ms. Yusi, is the government ready to
6 proceed?

7 MS. O'BOYLE: The United States is ready. Good
8 afternoon.

9 THE COURT: Good afternoon, counsel.

10 THE CLERK: Mr. Broccoletti, are you ready to
11 proceed on behalf of Daryl G. Bank?

12 MR. BROCCOLETTI: Good afternoon, Your Honor.
13 Present and ready.

14 THE COURT: Good afternoon.

15 THE CLERK: Ms. Munn, are you ready to proceed on
16 behalf of Billy J. Seabolt?

17 MS. MUNN: Good afternoon, Judge. I'm present and
18 ready to proceed.

19 THE COURT: Good afternoon.

20 THE CLERK: Mr. Connell, are you ready to proceed on
21 behalf of Kent Maerki?

22 MR. CONNELL: Yes, I am ready to proceed. Good
23 afternoon, Your Honor.

24 THE COURT: Good afternoon, Mr. Connell.

25 THE CLERK: Mr. Yarow, are you ready to proceed on

1 behalf of David Alcorn?

2 MR. YAROW: Good afternoon, Your Honor. Yes, I am
3 ready.

4 THE COURT: Good afternoon, Mr. Yarow.

5 THE CLERK: Ms. McCaslin, Mr. Kimball, are you ready
6 to proceed on behalf of Aghee William Smith, II?

7 MS. MCCASLIN: Yes, we are. Good afternoon, Your
8 Honor.

9 THE COURT: Good afternoon, counsel.

10 MR. KIMBALL: Good afternoon, Judge.

11 THE CLERK: Mr. Hallauer, are you ready to proceed
12 on behalf of Tony Scott Sellers?

13 MR. HALLAUER: Yes, ma'am.

14 Good afternoon, sir.

15 THE COURT: Good afternoon.

16 THE CLERK: Mr. Gantous, are you ready to proceed on
17 behalf of Thomas L. Barnett?

18 MR. GANTOUS: I am ready. Good afternoon, Your
19 Honor.

20 THE COURT: Good afternoon.

21 THE CLERK: And, Mr. Matthews, are you ready to
22 proceed on behalf of Norma Jean Coffin?

23 MR. MATTHEWS: Good afternoon, Judge. Here and
24 ready.

25 THE COURT: Okay, counsel. I appreciate all of you

1 coming on Zoom here for purposes of this conference here.
2 COVID-19 has certainly upset the plans that the Court had.
3 When the Court joined these cases, the Court anticipated that
4 it would try all eight at one time. After all, last July, I
5 tried a case about four weeks, I think, or more, eight
6 defendants, and it worked very well, but that obviously is
7 not what we can do now.

8 And so the Court, in its view, will have to sever
9 these cases, as you probably figured that out, because we're
10 limited in the number of defendants we can get in the
11 courtroom and to practice social distancing and other
12 precautions that we have had to adopt because of COVID-19.

13 So I have a couple of questions before I indicate
14 exactly what the Court anticipates doing.

15 Before the Court joined these cases, Ms. O'Boyle,
16 how long was it anticipated that it was going to take to try
17 Mr. Seabolt and Mr. Bank?

18 MS. O'BOYLE: Your Honor, the government estimated
19 that it would take approximately four weeks to try
20 Mr. Seabolt and Mr. Bank together.

21 THE COURT: Okay. So when I joined the cases, how
22 long did you anticipate it was going to take?

23 MS. O'BOYLE: Your Honor, I think with the joinder,
24 I think we expected -- because a lot of the evidence overlaps
25 between the two cases, I basically -- we think we basically

1 expected that it would take six to seven weeks together, with
2 all eight defendants.

3 THE COURT: All eight defendants. There's only one
4 defendant incarcerated here, and that's Mr. Maerki. The
5 Court has to make a determination about how it will sever
6 this case. I'm sure that the United States and the
7 defendants are probably more conversant on the way the proof
8 is running in this case than the Court is.

9 The Court has simply had the benefit of reading very
10 carefully the indictments to see where the overlap is in
11 these cases. So it's going to be based on the overlap and
12 certain other considerations that the Court is making a
13 decision about what is going first.

14 First, I will tell you all this:

15 Daryl Bank -- this case was indicted back in 2018,
16 and the Maerki case came along subsequent to that. So the
17 oldest defendants in here really are Bank and Seabolt. And
18 the Court would propose to sever Bank and Seabolt in its
19 first series of cases. The Court believes it has the
20 capacity to try at least three defendants at one time.

21 Now, the question becomes what three? The Court
22 would propose we try Mr. Seabolt and Mr. Bank and Mr. Maerki,
23 who is incarcerated, all at the same time. And subsequently,
24 the Court would come back, and the Court would take another
25 three and try them.

1 So that's what the Court is proposing to do here, is
2 to sever Mr. Maerki, who is incarcerated, Mr. Seabolt, and
3 Mr. Bank, who have been waiting to have their trial -- their
4 trial much longer, in the first round. And then the Court
5 would be able to tell you at some point where we could
6 schedule the next round.

7 There is no precise time that we would finish this
8 first round, so I can't tell you by December 1st or first
9 week in December we can start a second group of cases. We
10 will be able to tell you that once we get in the middle of
11 the case, and we will then have to schedule the next round of
12 cases.

13 So that's the best thing the Court can tell counsel.
14 I realize you've been waiting a long time to try your
15 clients, but that is the best the Court can do.

16 The Court has looked at the courtroom trying to
17 figure out how to squeeze four. It will be a challenge to
18 squeeze three, but we're going to squeeze three if someone
19 has to sit beside me. We're going to do three. And so
20 that's where we are in terms of the cases.

21 Any questions?

22 MR. YAROW: Yes, Your Honor. There's five
23 defendants left if you try the three. Do you anticipate
24 breaking them up again?

25 THE COURT: Well, I would still have to break them

1 up again because I can't try five at one time. And the
2 question is how will I break the five up? Is that what you
3 want to know?

4 MR. YAROW: No, not necessarily, but do you
5 anticipate trying the five together or --

6 THE COURT: No. I cannot try five together. If I
7 could try five together, I would do it right now, but I
8 cannot. So what I'll have to have is, I'll have to do a
9 three and two or a two and three, but I cannot do five, which
10 means that I am pretty confident in the second round I will
11 have Mr. Alcorn and Ms. Coffin.

12 Those two, I'm pretty confident, will be in my
13 second round, and at least one of the other defendants will
14 be in that same round. I will take Alcorn, Coffin, and
15 probably Mr. Smith in the second round. And the last two I
16 would do will be Sellers and Barnett. So that gives you some
17 way you can figure out about where we're going with the case.

18 I would love to have Ms. Coffin in the first round
19 here, given her role here, but I cannot get that done. So
20 that's my position on that.

21 MS. MUNN: Judge, this is Emily Munn on behalf of
22 Mr. Seabolt.

23 My issue is that I have another trial that's set to
24 start with Judge Smith on September 29th, and that trial has
25 been delayed now. We've been given about a week and a half

1 for jury selection. So I can say with about 90 percent
2 confidence that that trial is not going to be finished by
3 that first week of November now. I'm not sure what that
4 means as far as the courtroom setup, but I also -- I would
5 not personally be available to be in the first trial with
6 that schedule.

7 THE COURT: I wasn't aware. When did that happen?

8 MS. MUNN: We had a pretrial conference last week,
9 and Judge Smith announced that she'll be doing jury
10 questionnaires September 29th, that whole week, so we're
11 bringing in jurors to do questionnaires. The jury will be
12 seated either October 6th or October 7th. And the government
13 has said that the case is five weeks long.

14 THE COURT: Here's what we're going to have to do,
15 but I talked to Judge Smith, and we hope -- sometimes the
16 government says five weeks, but it's really three-and-a-half
17 weeks with efficiency.

18 MS. MUNN: Yes, sir.

19 THE COURT: Like eight weeks go down to six weeks
20 here. I think all of you-all know that I believe in
21 efficiency. We might have to run nine-hour days, but we're
22 going to get it done.

23 What I think it might help to do, Ms. Munn, is while
24 I say we'll start November 3rd, we may have to shift down a
25 week, but that also means it has other implications that I

1 may not be able to get to the second group before Christmas
2 at the rate we're going.

3 And I know I have a lot of conflicts in January, but
4 we may have to shift down by a week. So just be prepared for
5 November 3rd, in case some miracle happens in Judge Smith's
6 case, but we may have to shift down by a week.

7 MS. MUNN: Yes, sir.

8 THE COURT: But we're going to trial with
9 Mr. Seabolt, Mr. Maerki, and Mr. Bank in November.

10 MS. MUNN: I hear you, Judge. Yes, sir.

11 THE COURT: We'll just have to work around it. And
12 then, you know, miracles do happen.

13 MS. MUNN: I hear you, Judge. Yes, sir.

14 MR. BROCCOLETTI: Judge, this is Mr. Broccoletti on
15 behalf of Mr. Bank.

16 I'd respectfully have to object to the Court's
17 severance in having this trial go forward.

18 For the past year or so, we have planned on the
19 joint trial based upon the Court's ruling when it joined the
20 cases. We had divvied up the responsibilities amongst
21 counsel. We have divvied up experts and witnesses amongst
22 counsel, and we've prepared for a joint trial in that regard.

23 I understand the Court's concerned about moving the
24 cases and the docket and all the other issues, but it would
25 be very prejudicial to Mr. Bank, at this particular stage, to

1 now sever it and to give us approximately six weeks to be
2 able to prepare for those other areas for which other counsel
3 would have been working on. And so I'd have to respectfully
4 object to going to trial November 3rd with the severance.

5 THE COURT: Well, Mr. Broccoletti, the Court hears
6 your position, but I'm sure you understand the Court's
7 position. There is no way the Court can try eight defendants
8 at one time, and I don't think any appellate court would
9 suggest that the Court can try eight defendants at one time.

10 I'm left with no option but to sever defendants.
11 This is not something we anticipated. The Court would love
12 to try this case one time and get it over with, but we cannot
13 do it. I think that counsel will have to make an adjustment,
14 each, of you know what's in your case and be prepared to go.

15 I just have to note your objection and overrule the
16 objection. We have to go as indicated. But I think it's
17 appropriate that you put your objection on the record as you
18 have done.

19 MR. BROCCOLETTI: Yes, sir.

20 MS. McCASLIN: Your Honor, this is Lindsay McCaslin
21 representing Aghee Smith.

22 I will be making a similar objection. We do object
23 to the severance because of prejudice. We have been planning
24 for the past ten months to try this case with the
25 co-defendants. There are a lot of overlapping witnesses, lay

1 witnesses, expert witnesses, and also the potential of having
2 the co-defendants testify and the evidence that would be
3 brought forth from the co-defendants in the case, as well, so
4 we will be objecting on those grounds as well.

5 THE COURT: Okay. Your objection is noted, and for
6 the same reasons the Court put forth with respect to
7 Mr. Bank, the Court would maintain its overruling of your
8 objection.

9 MR. GANTOUS: This is Anthony Gantous for
10 Mr. Barnett.

11 Same objections for the same reasons, Your Honor,
12 just to be on the record.

13 THE COURT: The objection is noted. The objection
14 is overruled.

15 MS. MUNN: This is Emily Munn for Mr. Seabolt, and I
16 have the same objection. I understand the Court's ruling.

17 THE COURT: Thank you.

18 MR. CONNELL: Judge, this is Christian Connell for
19 Mr. Maerki, and I would make the same objection for the same
20 reason, but I understand the ruling.

21 THE COURT: Okay. Objection is overruled.

22 MR. YAROW: Your Honor, this is Richard Yarow for
23 David Alcorn with the same objection.

24 THE COURT: Objection noted and overruled for the
25 reasons first articulated with Mr. Bank.

1 MR. BROCCOLETTI: Your Honor, may I just bring up
2 one point? With respect to -- and I'm not trying to step in
3 for Ms. Munn, but I know the Court is optimistic that she is
4 going to be finished.

5 Would the Court consider having another group go
6 first in order to assure that Ms. Munn would be available to
7 be able to go to trial? Because I'm concerned that as we get
8 closer to that date and if she is still tied up, as well as
9 the ability to prepare for one trial while she is trying
10 another trial, just to be sure so that some cases can go,
11 would the Court consider altering its schedule to have other
12 defendants go first?

13 THE COURT: I don't think the Court wants to do
14 that. I think the Court looks at these cases; the Court's
15 read these indictments, and I think that, in this indictment,
16 I find some defendants probably are more culpable than
17 others, and the Court believes that the way it's divided is
18 appropriate.

19 And what the Court has indicated it will do, is the
20 Court is simply going to have to adjust to the fact that
21 Ms. Munn may not be available and we may have to push this
22 case down seven or eight days. I don't know. But the Court
23 thinks that the breakdown is the most appropriate and
24 reasonable with respect to the evidence, whatever the Court
25 is able to understand from reading these two indictments.

1 Ms. O'Boyle, what is your view on Mr. Broccoletti's
2 request? But that's the Court's view.

3 MS. O'BOYLE: Your Honor, it's the government's
4 position that we should go forward with the three that the
5 Court has noted.

6 I would just state that in terms of trial
7 preparation, Mr. Bank was indicted in August of 2017, and so
8 this case has been around for three years, and so we
9 certainly believe that Mr. Broccoletti is going to be able to
10 be fully prepared and ready to try this case on November 3rd.

11 Ms. Munn is -- her client was indicted in early
12 2018, so it's been over two years for Mr. Seabolt, as well,
13 and she is a very capable counsel and I think will be able to
14 be prepared.

15 And Mr. Maerki, particularly, given that Mr. Maerki
16 is in pretrial detention, we have no doubt that Mr. Connell
17 will be able to be prepared and ready for trial on
18 November 3rd.

19 I think the only other option I think -- the
20 government would actually prefer alternative counsel for
21 Mr. Seabolt and let him go forward with alternative counsel,
22 rather than substitute a different person or a different
23 defendant for Mr. Seabolt.

24 THE COURT: It's a little late in the day to be
25 talking about giving him alternative counsel. I mean, he has

1 been working with Ms. Munn, and the Court doesn't see this
2 potential problem as something that's going to stop this case
3 from being tried under reasonable time in the month of
4 November, and so the Court is not prepared to realign trial
5 of these defendants based upon this potential problem.

6 I realize that it works Ms. Munn very hard to go
7 from one trial to the other, but she is able, and I think she
8 will be able to handle it.

9 MS. O'BOYLE: Your Honor, the only other issue that
10 the government would raise is we would request speedy trial
11 findings be made with respect to the remaining, I guess, five
12 defendants that are not going to be going on November 3rd but
13 will be tried forthwith as soon as is possible.

14 THE COURT: The Court is very cognizant of that, and
15 the Court will, in fact, do that.

16 I will tell you some other preliminaries. With
17 respect to trying these cases, it will probably take us at
18 least two days to pick a panel because the Court is not going
19 to bring in very many jurors at one time. The Court will
20 probably bring in 24 during the morning, 24 during the
21 evening/afternoon, and do the same thing the next day to
22 avoid having too many jurors in courthouse.

23 You're probably aware we are sending out
24 questionnaires to the jurors when they're summonsed to
25 address issues of whether they have any problems with

1 COVID-19, whether they are medical professionals, or whether
2 they have childcare problems because the schools are not
3 functioning, and so we're trying to reduce the number of
4 jurors that show up with problems.

5 All jurors basically over the age that they're not
6 required to serve as jurors, we will not be calling those in
7 here. So we're going to do our best to cut down on the
8 number of jurors that show up that shouldn't be here or we
9 end up having to excuse.

10 MR. MATTHEWS: Your Honor, I'm sorry, I was kind of
11 bashful earlier. I'd like to note my objection to severance,
12 the same ruling. So I understand the Court's ruling on the
13 previous motion for severance.

14 Also, I spoke to my client specifically about speedy
15 trial. That's not going to be a problem here. She will
16 waive speedy trial, and I've notified the U.S. Attorney of
17 that.

18 THE COURT: Okay. Thank you.

19 MR. MATTHEWS: It's not going to be a problem.

20 THE COURT: The Court would never consider you to be
21 bashful, Mr. Matthews.

22 MR. HALLAUER: Your Honor, if I could, I guess
23 somebody's got to be last.

24 THE COURT: Wait a minute. Let me rule on
25 Mr. Matthews' objection.

1 Your objection is overruled.

2 MR. MATTHEWS: Yes, sir.

3 THE COURT: Who is next?

4 MR. HALLAUER: It's me, sir. It's Scott Hallauer
5 for Tony Sellers.

6 I'd also object to the severance. I think one of
7 the issues that is going to impact everybody is a lot of our
8 witnesses are the same. A lot of our witnesses on the
9 defense side are out of state. So we're talking about some
10 of these witnesses now attending court on three separate
11 occasions, on three separate days.

12 In addition, there's an idea that there may be some
13 defense experts that are going to be necessary. So we're
14 talking about expert witnesses and expert witness fees now
15 that we're going to ask from the government for three
16 separate dates and three separate fees.

17 So I just want to make sure that talking point is
18 heard. I realize these are unprecedented times and we have
19 to do different things, but there are going to be some real
20 mechanical complications to doing it in this way based on
21 defense witnesses.

22 THE COURT: Mr. Hallauer, you are exactly right
23 about the cost and the duplication, and the Court has thought
24 about all of that and just cannot figure out a way to get
25 everyone into the same place unless we can all meet outside

1 of this building or something, and then you have safety
2 problems and security problems and all things.

3 So we have to do it the hard way. And the
4 government is going to have to pay for the cost of witnesses
5 to travel who cannot afford the cost, and probably pay more
6 in counsel fees. So it's a costly process. This COVID-19 is
7 having a really adverse effect on everything. So you're
8 right. And listening at the same case three times is no easy
9 task.

10 MR. KIMBALL: Judge, this is Keith Kimball for Aghee
11 Smith, and perhaps the Court has thought about what I'm about
12 to say, but as far as the defense counsel, I'm not quite sure
13 about Mr. Connell, and I don't know how the government feels
14 about it, but I think most of the defense counsel -- why not
15 just move this case to spring, Judge? That way we try it
16 once, all defendants.

17 I think the Court can make the appropriate findings,
18 and I just think it would make sense and would solve all the
19 issues we're talking about, all the concerns.

20 THE COURT: Mr. Kimball, that was a thought, too,
21 but spring is no guarantee. There is no guarantee that we're
22 going to be anywhere come spring on this COVID-19. We still
23 have people out here doing irresponsible things. And so --
24 if you listen at the medical professionals, it's not going
25 away, so that's no guarantee.

1 Plus, we have the witnesses who may disappear
2 between now and spring. We have some aged witnesses in this
3 case, too. So I don't think spring is a viable option. I
4 guarantee you I thought about it. I have other things to do
5 other than this case.

6 MR. KIMBALL: I know, Judge. I know.

7 THE COURT: It would be good to move it, but that's
8 not going to work.

9 MR. YAROW: Judge, this may be a question for
10 Ms. Cherry, and it may not be able to be answered at this
11 time, but at what point do you think we would be notified
12 when our trial is going to be scheduled if we're in the
13 second or third group? What is the thought on that?

14 THE COURT: Okay. You'd probably get -- my
15 courtroom deputy, Ms. Thompson, is not with me today, but she
16 would be the one that would be notifying you, but what the
17 Court is going to do is, the Court is just trying to get a
18 measure here on where we go.

19 Right now, we're not sure whether we can start
20 November 3rd or November 10th or the 15th. So I have to get
21 some understanding of where that is, but we'll notify you as
22 soon as possible about the second round on this case here.

23 I understand what your concern is. You're in limbo.

24 MR. YAROW: Well, we have to get subpoenas out and
25 so forth.

1 THE COURT: That's true.

2 MR. YAROW: And I just want to make sure I have
3 sufficient time.

4 THE COURT: We'll attend to that, too.

5 We will have a status conference with the people --
6 we'll have another status conference with the second round,
7 and the third-round counsel certainly can be present to see
8 where we're going or what we're trying to work out.

9 I just ask for your patience in trying to deal with
10 this rather unusual way of going about handling criminal
11 justice.

12 MR. MATTHEWS: Your Honor, can I interject? I want
13 to amplify a little bit on what Mr. Kimball said.

14 I mean, this is a case with a lot of moving parts,
15 and because there are so many defendants, I've literally
16 planned to try this case with all of the other co-defendants,
17 and I don't think it's out of line to say that we are -- I
18 know, kind of, what their defenses are going to be; they
19 certainly know what mine is going to be.

20 And I don't -- we're going to have to change things.
21 I mean, things are going to be different because a lot of
22 defendants are actually leaving this case for the trial, so I
23 know I'm going to have to do things a little bit different.

24 So I just want to make sure the record is clear. I
25 agree with what Mr. Kimball said. These cases were joined.

1 I know -- and that's how they should be tried. And that's --
2 I know you've already ruled. I don't want to try the Court's
3 patience, but I just want to make sure the record is clear.

4 I've discussed it with Ms. Coffin. And the cases
5 were joined, and I understand COVID, but all of our
6 responsibilities are to our people, and I understand that
7 COVID has made things difficult for the Court system, but our
8 responsibility is to make sure that our clients get a fair
9 trial, and by severing them, I think everyone that's been
10 severed is going to have to basically reroute their defense
11 in some way, maybe some more than others.

12 THE COURT: That's an interesting argument about
13 rerouting your defense if you're separate. Your defense is
14 your defense. It should exist whether you're severed or not
15 severed.

16 MR. MATTHEWS: That's true. But this case has a lot
17 of moving parts, Your Honor. So I mean, I just wanted to
18 make sure I don't -- I know you've ruled, and I don't want to
19 try the patience of the Court.

20 THE COURT: I think all counsel have made their
21 point very clear, and the Court understands your point. You
22 might not know it, but for years the Court was a defense
23 counsel. You may know me as a prosecutor, but for years, I
24 was a defense counsel, and I know what it is to be
25 representing a client. But I just cannot accommodate what

1 you want to do.

2 If the Court had any assurance that, by March, we
3 might be able to try eight people, the Court would move it in
4 a heartbeat, but the Court does not believe that we're going
5 to be anywhere near that by March, so let's try it this way.

6 MS. O'BOYLE: Your Honor, can I raise one other
7 little factor just for the Court to consider?

8 As the government was preparing for the hearing
9 today, it's been a while, but after the second superseding
10 indictment came down, at arraignment, both Mr. Bank and
11 Mr. Seabolt waived a right to a jury trial, and the
12 government at the time objected and wanted the jury.

13 All three defendants -- Ms. Gibson, Mr. Bank, and
14 Mr. Seabolt -- all waived their right to a jury. But now
15 given where we are with COVID-19, I think the government --
16 I'm not sure what Mr. Seabolt's position is or what
17 Mr. Bank's position is now.

18 I did contact Ms. Munn and Mr. Broccoletti before
19 the hearing to let them know that I was going back through
20 and found the waivers. I don't know if their clients will
21 continue to stand on those waivers or if they're going to
22 require -- if they want a jury trial now, but I think the
23 government would be amenable to a bench trial with Mr. Bank
24 and Mr. Seabolt if their jury waivers still hold true.

25 THE COURT: Mr. Broccoletti?

1 MS. O'BOYLE: It would make -- I think the first
2 indictment, I think that trial, not having to pick a jury in
3 the time of COVID-19, I think makes things far, far simpler
4 on all of the parties.

5 MR. BROCCOLETTI: Your Honor, I have not spoken to
6 Mr. Bank about that in a year and a half, I would say, and
7 that was prior to any of the joinder and all the other
8 issues. So I would have to discuss that with him. I cannot
9 give the Court an answer to that today.

10 THE COURT: All right.

11 MS. MUNN: Judge, I'm in the same position.
12 Ms. O'Boyle did call me yesterday afternoon. I wasn't able
13 to have that discussion with Mr. Seabolt since last night,
14 but a lot has changed on the landscape since we did that
15 waiver. We were joined, and there are other people involved.
16 I'm not really in a position to say whether he still has that
17 willingness to a bench trial.

18 MR. BROCCOLETTI: And in addition, Mr. Maerki did
19 not waive trial by jury, as I understand it, and the Court
20 has joined him with us for this trial, so it may be a moot
21 point.

22 THE COURT: Is that correct, Mr. Connell?

23 MR. CONNELL: Yeah, Mr. Maerki has not waived his
24 right to a trial by jury.

25 THE COURT: Either way we go, we still have to

1 select a jury.

2 MR. BROCCOLETTI: Correct.

3 THE COURT: All right. Well, you see we still have
4 moving pieces here.

5 All right. Anything else?

6 MR. BROCCOLETTI: No, Your Honor. Thank you.

7 MR. HALLAUER: Judge, just for the record purposes,
8 we never got around to your ruling on Mr. Sellers. It's the
9 same motion, but I think we started talking about other
10 issues before you got to it.

11 THE COURT: I overruled your objection to the
12 severance --

13 MR. HALLAUER: Yes, sir.

14 THE COURT: -- for the record.

15 MR. CONNELL: Your Honor, this is Christian Connell.
16 I just have one other thing. I'd feel remiss and that I
17 wasn't doing my job if I didn't bring this up.

18 As you know, Mr. Maerki is the only one who is
19 currently being held in pretrial detention at Western
20 Tidewater Regional Jail, and they have now had an outbreak of
21 COVID.

22 What I'm getting from the press and what I get from
23 the website is they have at least 20 reported cases. From
24 speaking to my client, I understand that it's directly, not
25 in his what they call pod, but it's the pod next to his.

1 So I'm just going to raise that issue because I'm
2 concerned about his physical well-being. He's 77 and has
3 tremendous heart problems.

4 THE COURT: Okay. Well, I'll tell you what you do,
5 Mr. Connell; I've been getting updates on a daily basis about
6 the status of COVID-19 in the jail and where it is and
7 et cetera, because I still have other defendants who are
8 either going or situated at Tidewater Regional Jail.

9 You can put your motion in writing, but I assure you
10 the Court is trying to keep up with what's what in terms of
11 where COVID-19 is and who's affected, and the Court is very
12 much aware of his age and his status. You can put that
13 motion in writing if you wish to do so.

14 I will check with the jail to see specifically
15 what's happening with Mr. Maerki.

16 MR. CONNELL: Yes, Your Honor.

17 One quick question: Are you getting that
18 information from the Marshals? Because I would love to get a
19 call, then, as well, or is it --

20 THE COURT: Well, no. The Marshal updates the
21 judges on the issues we have with respect to the jails and
22 where we have people detained. It comes through the U.S.
23 Marshal to the Court.

24 MR. CONNELL: Okay. Thank you, Your Honor.

25 MS. MUNN: This is Emily Munn for Mr. Seabolt.

1 Can I ask -- I want to make sure that I'm available
2 with input about when I'm going to be free and whether I'll
3 be prepared to try this case.

4 Is it the Court's plan for us to set another status
5 conference between now and November 3rd, or are we picking a
6 new date now? My concern is that I'm about to be unavailable
7 for hearings during the day for the foreseeable future.

8 THE COURT: What we should do, Ms. Munn, is, with
9 the three people that we're going forward with, the Court can
10 have another status conference, as necessary.

11 If you want to ask the Court for one on a specific
12 date, fine. And as the Court sees things unfold, I will make
13 sure that I get back to you to make sure that you understand
14 where we are and see what adjustments we have to make. Okay?
15 The Court will not leave you hanging.

16 MS. MUNN: I believe that, Your Honor. I just want
17 to make sure I'm not going to miss out on anything during the
18 day if I'm in court.

19 THE COURT: Well, we'll try to make sure that
20 doesn't happen either.

21 Anything else?

22 MR. CONNELL: No, sir.

23 THE COURT: All right, then. The Court will be in
24 touch with you as things unfold here. As the pieces keep
25 moving, we'll keep moving, but we will survive this. All

1 right?

2 You may close court.

3 (Off the record at 3:08 p.m.)

4

5 CERTIFICATION

6

7 I certify that the foregoing is a correct transcript
8 from the record of proceedings in the above-entitled matter.

9

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11 _____/s/_____

12 Carol L. Naughton

13 March 16, 2021

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Carol L. Naughton, Official Court Reporter